

Ashoka Marketing Ltd. and Another

Vs

Punjab National Bank and Others

And

Sahu Jain Services Ltd. and Another

Vs

Punjab National Bank and Others

And

K. B. Parsai

Vs

Union Bank of India and Others

And

M/s. Bennett Coleman and Co. Ltd. and Other

Vs

Life Insurance Corporation of India and Others

Civil Appeal Nos. 2368 of 1986

(CJI Sabyasachi Mukharji, B. C. Ray, S. C. Agrawal, M. H. Kania, K. N. Saikia JJ)

07.08.1990

JUDGMENT

S. C. AGRAWAL, J. -

1. The common question which arises for consideration in these appeals, by special leave, and the petition filed under Article 32 of the Constitution is, Whether who a person was inducted as a tenant in premises, which are public premises for the purpose of the Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the 'Public Premises Act') and whose tenancy has expired or has been terminated, can be evicted from the said premises as being a person in unauthorised occupation of the premises under the provision of the protection of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'Rent Control Act'). In short, the question is whether the provision of the Public Premises Act would override the provisions of the Rent Control Act in relation to premises which fall within the ambit of both the enactments.

2. Civil Appeals Nos. 2368 and 2369 of 1986 relate to the premises which are part of a building situated at 5 Parliament Street, New Delhi. The said building originally belonged to Punjab National Bank Ltd., a banking company. Ashoka Marketing Ltd. (appellant 1 in Civil Appeal No. 2368 of 1986) and M/s. Sahu Jain Services Ltd. (appellant 1 in Civil Appeal No. 2369 of 1986) were tenants of premises located in the said building since July 1, 1958. As a result of the enactment of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereinafter referred to as the 'Banks Nationalisation Act'), the undertaking of the Punjab National Bank Ltd., was transferred and vested in Punjab National Bank a body corporate constituted under the provisions of the said Act and the aforesaid appellants became the tenants of Punjab National Bank. By notices dated May 18, 1971 issued under Section 106 of the Transfer of Property Act, the tenancies of both the appellants were terminated by Punjab National Bank, with effect from November 30, 1971. Thereafter, the said Bank initiated proceedings under the Rent Control Act against both the appellants. In those proceedings an objection was raised by the said appellants that proceedings for eviction under the Rent Control Act were not maintainable view of the provisions contained in the Public Premises Act. During the pendency of the said proceedings under the Rent Control Act, proceedings were initiated by the Estate Officer against the appellants under the Public Premises Act and while the said proceeding under the Public Premises Act were pending the earlier proceedings initiated under the Rent Control Act were dismissed by the Additional Rent Controller, Delhi, by orders dated August 6, 1979. In the proceedings under the Public Premises Act the Estate Officer passed orders for eviction against the appellants and appeals filed by the appellants against the said orders of the Estate Officers were dismissed by the Additional District Judge, Delhi. The appellants filed writ petition under Article 226 of the Constitution, in the Delhi High Court. The said writ petitions were dismissed by the High Court by orders dated May 30, 1986. Aggrieved by the said orders of the High Court, the appellants have these appeals after obtaining special leave to appeal.

3. Civil Appeal No., 3725 of 1986 relates to an office room in the Allahabad Bank Building situated at 17, Parliament street, New Delhi. The said building belongs to Allahabad Bank, a body corporate constituted under the provisions of the Banks Nationalisation Act. The said premises were let out to Pt. K. B. Parsai, the appellant in this appeal, for a period of three years with effect from February 1, 1982. After the expiry of the said period eviction proceedings under the provision of the Public Premises Act were initiated to evict the appellant and in those proceedings the Estate Officer passed an order dated March 29, 1986. The appellant filed a writ petition under Article 226 of the Constitution, wherein he challenged the validity of the order passed by the Estate Officer. The said writ petition was dismissed by the Delhi High Court by order dated August 7, 1986. The appellant has filed this appeal against the said decision of the Delhi High Court after obtaining special leave to appeal.

4. Writ Petition No. 864 of 1985, relates to premises in the building located at 10, Darya Ganj, New Delhi. The said building originally belonged to Bharat Insurance Company Limited, as insurance company which was carrying on life insurance business. M/s. Bennett Coleman & Co. Ltd. (petitioner 1 in the writ petition) was in occupation of a part of the said property as a tenant under M/s. Bharat insurance Co. Ltd. since 1948. The life insurance business carried on by the various insurance companies, including M/s. Bharat Insurance Company Ltd., was nationalised and vested in Life Insurance Corporation. The Life Insurance Corporation gave a notice under Section 106 of the Transfer of property Act terminating a tenancy of petitioner 1 with effect from August 31, 1953 and thereafter proceedings for eviction were initiated against petitioner 1 under the provisions of the Public Premises Act and notices dated December 15, 1984 were issued by the Estate Officer under Section 4(1) and Section 7(3) of the Public Premises Act. Feeling aggrieved by these notices the

petitioners have filed the writ petition.

5. Before we proceed to deal with the submissions of the learned counsel for the appellants in the appeals and for the petitioners in the writ petition (hereinafter referred to as 'the petitioners') it would be relevant to advert to the legislative history of Public Premises Act.

6. The Public Premises Act was preceded by two such enactments. The first enactment was the Government Premises (Eviction) Act, 1950 (hereinafter referred to as 'the 1950 Act') which was enacted by Parliament to provide for the eviction of certain persons from government premises and for certain matters connected therewith. It was confined, in its application, to premises (a building or a part of a building) belonging to or taken on lease or requisitioned by the Central Government and it empowered the competent authority to evict a person in unauthorised occupation of such premises after issuing a notice to such person. The 1950 Act did not define the expression "unauthorised occupation" and it also did not prescribe the procedure to be followed by the competent authority before passing the order of eviction. There was a provision for appeal to the Central Government against the order of the competent authority. The 1950 Act declared as unconstitutional by the Calcutta High Court in *Jagu Singh v. M. Shaukat Ali* (58 Cal WN 1066 : AIR 1955 NUC Cal 4499) and by the Punjab High Court in *Satish Chander v. Delhi Improvement Trust* (AIR 1958 Punj 1 : 59 Punj LR 621) on the ground that it imposed unreasonable restriction on the right of the citizens to acquire, hold and dispose of property guaranteed under Article 19(1)(f) of the constitution, and by the Allahabad High Court in *Brigade Commander, Meerut Sub Area v. Ganga Prasad* (AIR 1956 All 507 : 1956 All LJ 251) on the ground that it was violative of the right to equality guaranteed under Article 14 of the Constitution.

7. Thereupon Parliament enacted the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (hereinafter referred to as 'the 1958 Act'). In the 1958 Act; the definition of public premises was enlarged to include, in relation to the Union Territory of Delhi, premises belonging to Municipal Corporation of Delhi, or any municipal committee or notified area committee and premises belonging to Delhi Development Authority. In the 1958 Act, the expression "unauthorised occupation" was defined. It also laid down the procedure to be followed by the Estate Officer for evicting a Person in unauthorised occupation of public premises and it made provision for filing an appeal against every order of the Estate Officer before the District Judge or such other judicial officer in that district of not less than ten years standing as the District Judge may designate in that behalf. In *Northern India Caterers Private Limited v. State of Punjab* ((1967) 3 SCR 399 : AIR 1967 SC 1581) Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 was held to be void by this Court on the ground that the said provision conferred an additional remedy over and above the remedy by way of suit and that by providing two alternative remedies to the government and in leaving it to the unguided discretion of the Collector to resort to one or the other and to pick and choose some of those in occupation of public properties and premises for the application of the more drastic procedure under Section 5, the said provision was violative of Article 14 of the Constitution. The provision contained in the Punjab Act were similar to those contained in the 1958 Act. Keeping in view the decision of this Court in *Northern India Caterers Private Limited* case ((1967) 3 SCR 399 : AIR 1967 SC 1581), Parliament enacted Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1968 whereby the 1958 Act was amended and Section 10-E was introduced and a bar was created to the jurisdiction of civil court to entertain any suit or proceeding in respect of eviction of any person in unauthorised occupation of any public premises or the recovery of the arrears of the rent or damages payable under the provisions of the 1958 Act. The Delhi High Court (in *P. L. Mehra v. D. R. Khanna* (AIR 1971 Del 1 : 1971 Ren CR 100)) held that whole of the 1958 Act was void under Article 13(2) being violative of the provisions

of Article 14 of the Constitution and the amendment of 1968 was ineffective.

8. This led to the enactment of the Public Premises Act by Parliament in 1971. It was brought into effect from September 16, 1958, the date on which the 1958 Act came into force. The provisions of the Public Premises Act are similar to those contained in the 1958 Act. The definition of 'public premises' contained in Section 2(e) of the Public Premises Act has been widened so as to include premises belonging to or taken on lease by or on behalf of a company, as defined in Section 3 of the Companies Act, 1956, in which not less than fifty one percent of the paid-up capital is held by the Central Government as well as premises belonging to or taken on lease by or on behalf of any corporation (not being a company, as defined in Section 3 of the Companies Act in 1956, or a local authority) established by or under a Central Act and owned and controlled by the Central Government. It contains certain additional provisions, providing for offences and penalties (Section 11), liability of heirs and representatives (Section 13), recovery of rent etc. as an arrear of land revenue (Section 14) and bar of jurisdiction of courts (Section 15). The validity of the Public Premises Act was upheld by this Court in *Hari Singh v. Military Estate Officer* ((1972) 2 SCC 239 : (1973) 1 SCR 515).

9. The Public Premises Act was amended in 1980 by the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980, whereby the definition of 'public premises' in Section 2(e) was amended to include premises belonging to or taken on lease by or on behalf of certain autonomous and statutory organisations, viz. any University established or incorporated by any Central Act, any institute incorporated by the Institutes of Technology Act, 1961, any Board of Trustees constituted under the Major Port Trusts Act, 1963, and the Bhakra Management Board and as well as premises belonging to or taken on lease by any company which is subsidiary of a company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty one percent of the paid-up capital is held by the Central Government. By the said Amending Act of 1980, the total period taken in eviction proceedings was also sought to be curtailed by reducing the period for showing cause against notice of eviction, the period within which an unauthorised occupant should vacate the premises after eviction order has been passed and the period for filling an appeal against the order of an Estate Officer. By the said Amending Act of 1980 provisions were also made, by inserting Sections 5-A, 5-B and 5-C to deal with the squatting or spreading of goods on or against or in front of any public premises and removal of unauthorised constructions or encroachments on public premises. The Public Premises Act was further amended in 1984 by the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1984 whereby certain further amendments were made to provide for increased penalties and making the offences under the Act cognisable and to enable the Estate Officers to exercise their powers under the Act effectively.

10. As stated in the preamble, the Public Premises Act has been enacted to provide for the eviction of unauthorised occupants from public premises and, for certain incidental matters. In Section 2, various expressions have been defined. The definitions of the following expressions which are of relevance are reproduced as under :

"(c) "Premises" means any land or any building or part of a building and includes -

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of a building, and

(ii) any fitting affixed to such building or part of a building for the more beneficial enjoyment thereof;"

"(e) "Public Premises" means -

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 under the control of Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of, -

(i) any company as defined in Section 3 of the Companies Act, 1956 (1 of 1956) in which not less than fifty one percent of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of the Act) of the first mentioned company,

(ii) any corporation [not being a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), or a local authority] established or controlled by the Central Government,

(iii) any University established or incorporated by any Central Act,

(iv) any institute incorporated by the Institute of Technology Act, 1961 (59 of 1961),

(v) any Board of Trustees constituted under the Major Port Trust Act, 1963 (38 of 1963),

(vi) the Bhakra Management Board constituted under Section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966) and that Board as and when renamed as the Bhakra-Beas Management Board under sub-section (6) of Section 80 of that Act, and

(3) in relation to the Union territory of Delhi -

(i) any premises belonging to the Municipal Corporation of Delhi, or any municipal committee or notified area committee, and

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by the said Authority.

(g) "Unauthorised Occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been expired for any reason whatsoever."

Section 3 makes provision for appointment by Central Government of gazetted officers of government or officers of equal rank of the statutory authority as Estate Officers. Section 4 relates to issue of show cause against order or eviction and provides as under :

"4(1) If the Estate Officer is of an opinion that any person are in unauthorised occupation of any public premises and that they should be evicted, the Estate Officer shall issue in the manner hereinafter provided a notice in writing calling upon all person concerned to show cause why an order of eviction should not be made.

(2) The notice shall -

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises, -

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof; and

(ii) to appear before the Estate Officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.

(3) The Estate Officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the Estate Officer knows or has reasons to believe that any persons are in occupation of the public premises, then, without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed."

Section 5 relates to eviction of unauthorised occupants and provides as under :

"5. (1) If, after considering the cause, if any, shown by any person in pursuance of a notice under Section 4 and any personal hearing, if any, given under clause (b) of sub-section (2) of Section 4, the Estate Officer is satisfied that occupation of the public premises is unauthorised, the Estate Officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1) whichever is later, the estate officer or any officer duly authorised by the estate officer in this behalf may after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person from, and take possession of the public premises and may, for that purpose, use such force as may be necessary."

Section 5-A provides for removal of unauthorised constructions/structures or fixtures, cattle or other animal from public premises. Section 5-B deals with demolition of unauthorised constructions. Section 5-C empowers the Estate Officer to seal unauthorised constructions. Section 6 provides for disposal of property left on public premises by unauthorised occupants. Section 7 empowers the Estate Officer to require payment of rent or damages on account of use and occupation of public premises along with interest by the person found in unauthorised occupation. Section 8 lays down that an Estate Officer shall, for the purpose of holding any inquiry under the Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying to suit in respect of certain matters, viz. summoning and enforcing the attendance of any person and examining him on oath, requiring discovery and production of documents, and any other matter which may be prescribed. Section 9 provides for an appeal from every order of the Estate Officer in respect of any public premises passed under Sections 5, 5-B, 5-C, and 7 to an appellant officer who shall be a District Judge of the district in which the public premises are situate or such other judicial officer in the district of not less than ten years standing as the District Judge may designate in this behalf. It also prescribes the period of limitation for filing such appeals and also lays down that the appeal shall be disposed of by the appellant officer as expeditiously as possible. Section 10 attaches finality to the orders made by an Estate Officer or appellant officer and provides that the said orders shall not be called in question in any original suit application or execution proceedings and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act. Section 11 provides for offences and penalties and Section 11-A lays down that the offences under Section 11 would be treated as cognizable offences under the Code of Criminal Procedure, 1973. Section 15 relates to bar of jurisdiction and it provides as under :

"15. No court shall have jurisdiction to entertain any suit or proceeding in respect of -

- (a) the eviction of any person who is in unauthorised occupation of any such public premises, or
- (b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under Section 5-A, or
- (c) the demolition of any building or other structure made, or ordered to be made, under Section 5-B, or
- (cc) the sealing of any erection or work or of any public premises under Section 5-C,
- (d) the arrears of rent payable under sub-section (1) of Section 7 or damages payable under sub-section (2), or interest payable under sub-section (2-A) of that Section,
- (e) the recovery of -
 - (i) costs of removal of any building, structure or fixture or goods, cattle or other animal under Section 5-A, or
 - (ii) expenses of demolition under Section 5-B, or

(iii) costs awarded to the Central Government or statutory authority under sub-section (5) of Section 9, or

(iv) any portion of such rent, damages, cost of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority."

11. In exercise of the powers conferred by Section 18 of the Public Premises Act, the Central Government has made the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (hereinafter referred to as the 'Public Premises Rules'). Rule 5 of the said Rules relates to holding of inquiries and Rule 9 relates to procedure in appeals.

12. We will first deal with the contentions urged by the learned counsel for the petitioners with regard to the scope of the definition of the expression 'public premises' contained in Section 2 (e) and 'unauthorised occupation ', contained in Section 2(g) of the Public Premises Act.

13. As mentioned earlier, the appeals relate to premises belonging to nationalised banks, viz, Punjab National Bank and Allahabad Bank, constituted under the provisions of the Banks Nationalisation Act. It has been urged by Shri Yogeshwar Prasad, that the premises belonging to a nationalized bank do not fall within the ambit of the definition of 'public premises' contained in Section 2(e) of the Public Premises Act, for the reason that nationalised bank is not a company as defined in Section 3 of the Companies Act, 1956 and it is also not a corporation established by or under a Central Act. The submission of the learned counsel for the respondent banks is that the nationalised bank is a corporation established by a Central Act, viz, the Banks Nationalisation Act, and the premises belonging to a nationalised bank are 'public premise ' under Section 2(e) 2(ii) of the Public Premises Act. The question which, therefore, requires to be considered is whether a nationalised bank is a corporation established by or under a Central Act and is owned or controlled by the Central Government.

14. The nationalised banks have been established under the Banks Nationalisation Act, wherein the nationalised banks have been described as 'corresponding new bank'. In sub-section (i) of Section 3 of the Banks Nationalisation Act, it has been provided that on the commencement of the said Act, there shall be constituted such corresponding new banks as are specified in the First Schedule. In sub-section (2) of Section 3, it is laid down that the paid-up capital of every corresponding new bank constituted under sub-section (1) shall, until any provision is made in this behalf in any scheme made under Section 9, be equal to the paid-up capital of the existing bank in relation to which it is the corresponding new bank. Sub-section (3) of Section 3 provides that the entire capital of the new bank shall stand vested in, and allowed to the Central Government. Sub-section (4) of Section 3 lays down that every corresponding new bank shall be a body corporate with perpetual succession and a common seal with power, subject to the provision of the said Act, to acquire, hold and dispose of property, and to contract, and may sue and be sued in its name. From the aforesaid provisions contained in Section 3 of the Banks Nationalisation Act it is evident that the nationalised banks have been established under the provisions of the said Act and the same are distinct juristic persons with perpetual succession and the power to acquire, hold and dispose of property and to contract and having the right to sue and be sued in their own name and further that the entire capital of the said banks is vested in the Central Government, meaning thereby, that the said banks are owned by the Central Government.

15. Shri. Yogeshwar Prasad has pointed out that, in view of Section 3(4) of the Banks Nationalisation Act, the nationalised bank is a body corporate and not a corporation and that there is

a distinction between a body corporate and a corporation inasmuch as a body corporate includes bodies, such as companies, cooperative societies, etc. which are not corporations. Reliance has been placed in this regard on the decision of Delhi High Court in *Oriental Bank of Commerce v. Delhi Development Authority* ((1985) 55 Com Cas 81 (Del HC). We find no substance in this contention.

16. In English law a corporation has been defined as "a body of persons or an office which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question." (See Halsbury's Laws of England, 4th edn., volume 9, para 1201). Generally speaking, corporations are of two kinds, corporation aggregate and corporation sole. A corporation aggregate has been described as an incorporate group of co-existing persons and a corporation sole as an incorporated series of successive persons (Salmond on Jurisprudence, 12th edn. p. 308). The distinctive feature of a corporation are that it has the capacity of continuous existence and succession, notwithstanding changes in its membership and it possesses the capacity of taking, holding and conveying property, entering into contracts, suing and being sued, and exercising such other powers and privileges conferred on it by law of its creation just as a natural person may (see *S. S. Dhanoa v. Municipal Corporation, Delhi* ((1981) 3 SCC 431 : 1981 SCC (Cri) 733 : (1981) 3 SCR 864)). Corporation aggregate may be public or private. A public corporation is a corporation formed for a public purpose e.g. local government authorities, and it is usually incorporated by a public general Act of Parliament. A private corporation is a corporation formed for profit e.g. a limited company, and it is usually incorporated under a statutory enactment. After the second world war there has been development of a new pattern of public corporations in England as an instrument of planning in the mixed economy. The general characteristics of such a public corporation is that it is normally created by a special statute; it has no shares and no shareholders either private or public, and its shareholder, in the symbolic sense, is the nation represented through government and Parliament; the responsibility of the public corporation is to the government, represented by the competent Minister and through the Minister to Parliament; the administration of the public corporation is entirely in the hands of a board which is appointed by the competent Minister; and it has the legal status of a corporate body with independent legal personality. (See W. Friedman : "The New Public Corporations and the Law" ((1974) 2 SCC 402 : (1975) 1 SCR 1). There is a similar growth of this type of public corporation in other countries. This trend is also evident in our country since independence and a number of such public corporations have been constituted by the Acts of Parliament.

17. The distinction between such a public corporation and a corporation generally known in law has been explained in the following observations of Denning L.J., as he then was : (KB pp. 22-23)

"The Transport Act, 1947, brings into being the British Transport Commission, which is a statutory corporation of a kind comparatively new to English law. It has many of the qualities which belong to corporations of other kinds to which we have been accustomed. It has, for instance, defined powers which it cannot exceed; and it is directed by a group of men whose duty it is to see that those powers are properly used. It may own property, carry on business, borrow and lend money, just as any other corporation may do, so long as it keeps within the bounds which Parliament has set. But the significant difference in this corporation is that there are no shareholders to subscribe the capital or to have any voice in its affairs. The money which the corporation needs is not raised by the issue of shares but its borrowing is not secured by debentures, but is guaranteed by the Treasury. If it cannot repay, the loss falls on the Consolidated Fund of the United Kingdom; that is to say, on the tax payer. There

are no shareholders to elect the directors or to fix their remuneration. There are no profits to be made or distributed." (Tamlin v. Hannaford, (1950) 1 KB 18 : (1949) 2 All ER 327)

18. Reference has already been made to the provisions of the Banks Nationalisation Act which shows that the nationalised bank has been constituted as a district juristic person by the Act and it is owned by the Central Government. There are other provisions in the Banks Nationalisation Act which show that the general superintendence, direction and management of the affairs of the business of the bank is vested in a Board of Directors constituted by the Central Government and the Central Government has the power to remove the person from the membership of the Board of Directors [Section 7(2) and 7(3)] and in the discharge of its functions the bank is to be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve Bank give (Section 8). This indicates that the nationalised bank has all the attributes of the new pattern of public corporation.

19. Merely because the expression 'body corporate' has been used in relation to the nationalised banks in Section 3(4) of the Banks Nationalisation Act and the expression 'corporation' has not been used, does not mean that the nationalised bank is not a corporation. The expression 'body corporate' is used in legal parlance to mean 'a public or private corporation' (Black's Law Dictionary p. 159).

20. Shri. Yogeshwar Prasad has urged that in order to constitute a corporation there must exist persons, i.e. members, composing it, and that this element is missing in the nationalised banks inasmuch as the Banks Nationalisation Act does not provide for any membership to these banks. This contention is without any merit because, as noticed earlier, in the new pattern of public corporations which have developed, there are no shares and no shareholders, either in public or private, and its shareholder, in the symbolic sense, is the nation represented through government and Parliament. A similar contention was raised before the High Court of Australia in the Bank of New South Wales v. Commonwealth ((1948) 76 CLR 1) in relation to the Commonwealth Banks established as a body corporate by the Commonwealth Bank Act, 1945. While rejecting this contention, Latham C.J. has observed : (CLR p. 227)

"The Commonwealth Parliament has declared that the bank is a corporation and the court must on this, as on many previous occasions, accept that the bank (though it has no corporators) exists as a new kind of juristic person."

Similarly Dixon J. has observed : (CLR p. 361)

"Although the Commonwealth Bank is declared to be a body corporate there are no corporators. I see no reason to doubt the constitutional power of the Federal Parliament, for a purpose within its competence, to create a juristic person without identifying an individual or a group of natural persons with it, as the living constituent or constituents of the corporation. In other legal systems an abstraction or even an inanimate physical thing has been made and artificial person as the object of rights and duties."

21. It may also be mentioned that in R. C. Cooper v. Union of India ((1970) 1 SCC 248 : (1970) 3 SCR 530) this Court, while referring to nationalised banks constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969, has treated the nationalised banks as corporations.

22. While construing the expression 'corporation' in Section 2(e) (2)(ii) of the Public Premises Act it cannot be ignored that the object of the legislation in enlarging the definition of 'public premises' in Section 2(e) is to make available the machinery of the Act for evicting unauthorised occupants not only from the premises belonging to the Central Government but also from premises belonging to companies, corporations and statutory bodies in which the Central Government has a substantial interest. Under Section 2(e) (2)(i) premises belonging to a company incorporated under the Companies Act, 1956, in which not less than fifty-one per cent of the paid-up capital held by the Central Government, are to be treated as public premises. It could not be the intention of Parliament that premises belonging to public corporations whose entire paid-up capital vests in the Central Government and who are the instrumentalities of State would be excluded from the ambit of the definition of 'public premises'. In our opinion, therefore, the expression 'corporation' in Section 2(e) (2)(ii) of the Public Premises Act would include public corporations of the new pattern constituted under the Central Acts wherein the entire paid-up capital vests in the Central Government.

23. Shri Yogeshwar Prasad has placed reliance on the decision of the Court in S. S. Dhanoa case ((1981) 3 SCC 431 : 1981 SCC (Cri) 733 : (1981) 3 SCR 864) wherein this Court has considered the question whether the Cooperative Store Ltd., a cooperative society registered under the Bombay Cooperative Societies Act, 1925 is a corporation established by or under a Central, Provincial or State Act, for the purposes of clause Twelfth of Section 21 of the Indian Penal Code. This Court has observed that a corporation established by or under an Act of legislature could only mean a body corporate which owes its existence and not merely its corporate status to the Act and a distinction has been drawn between a corporation established by or under an Act and a body incorporated under an Act. It has been held that the Cooperative Store Ltd., which is a society registered under the Bombay Cooperative Societies Act, 1925, is not a statutory body because it is not created by a statute and that it is a body created by an Act of a group of individuals in accordance with the provisions of a statute. This decision does not lend any assistance to the contention of Shri Yogeshwar Prasad.

24. In Oriental Bank of Commerce case ((1985) 55 Com Cas 81 (Del HC) the question for consideration was, whether the Chairman of a nationalised bank is a public servant and sanction under Section 197 of Code of Criminal Procedure was necessary to prosecute him. M. L. Jain, J. has held that the nationalised bank is a body corporate and not a corporation within the meaning of clause Twelfth of Section 21 IPC and, therefore, the Chairman of the nationalised bank is a corporation, the Chairman of the said bank is not in the service or pay of the bank and further (in the facts of the case) it could not be said that the Chairman was acting or purporting to act in the discharge of official duty. Sachar, J. did not consider it necessary to deal with the question, as to whether the nationalised bank is a corporation because he was of the view that Section 197 CrPC was not attracted. For the reasons mentioned earlier, the judgment of Jain, J insofar as it draws a distinction between a 'body corporate' and a 'corporation' and lays down that the nationalised bank, though a 'body corporate' is not a corporation, cannot be upheld. The other reason given by Jain, J. is that the nationalised bank is merely a personified institution having no members and is, therefore, not a corporation. This view also cannot be sustained. We have already pointed out that in order to constitute a corporation it is not necessary that there should be shareholders or members and that in the new pattern of public corporation that has developed there are no shareholders or members.

25. Keeping in view the provisions of the Banks Nationalisation Act we are of the opinion that the nationalised bank is a corporation established by a Central Act and it is owned and controlled by the Central Government. The premises belonging to a nationalised bank are public premises under Section 2(e) (2)(ii) of the Public Premises Act. We are, therefore, unable to accept the contention of

Shri Yogeshwar Prasad that premises belonging to a nationalised bank do not fall within the ambit of the definition of 'public premises' contained in Section 2(e) of the Public Premises Act.

26. Shri Yogeshwar Prasad has also urged that 'public premises' as defined in Section 2(e) of the Public Premises Act, must be confined to premises let out for residential purposes only and should not cover premises let out for commercial purposes and that if premises let out for commercial purposes are included, Section 2(e) would be rendered unconstitutional as being violative of the provisions of Articles 14, 19(1)(g) and 21 read with Articles 39 and 41 of the Constitution. The submission of Shri Yogeshwar Prasad is that a construction which would sustain the constitutionality of the provisions of Section 2(e) should be preferred over a construction which would render them unconstitutional. We find no force in this contention.

27. There is no warrant for confining the scope of the definition of 'public premises' contained in Section 2(e) to premises used for residential purposes only and to exclude premises used for commercial purposes from its ambit. In *Hari Singh v. Military Estate Officer* ((1972) 2 SCC 239 : (1973) 1 SCR 515) a similar contention was advanced and it was argued that the expression 'premises' in Public Premises Act would not apply to agricultural land. This Court rejected that contention with the observation : (SCC p. 249, para 23)

"The word 'premises' is defined to mean any land. Any land will include agricultural land. There is nothing in the Act to exclude the applicability of the Act to agricultural land."

28. We are also unable to hold that the inclusion of premises used for commercial purposes within the ambit of the definition of 'public premises', would render the Public Premises Act as violative of the right to equality guaranteed under Article 14 of the Constitution or right to freedom to carry on any occupation, trade or business guaranteed under Article 19(1)(g) of the Constitution or the right to liberty guaranteed under Article 21 of the Constitution. It is difficult to appreciate how a person in unauthorised occupation of public premises used for commercial purposes, can invoke the Directive Principles under Articles 39 and 41 of the Constitution. As indicated in the statement of Objects and Reasons the Public Premises Act has been enacted to provide for a speedy machinery for the eviction of unauthorised occupants of public premises. It serves a public purpose, viz. making available, for use, public premises after eviction of persons in unauthorised occupation. The need to provide speedy machinery for eviction of persons in unauthorised occupation cannot be confined to premises used of residential purposes. There is no reason to assume that such a need will not be there in respect of premises used for commercial purposes. No distinction can, therefore, be made between premises used for residential purposes and premises used for commercial purposes in the matter of eviction of unauthorised occupants of public premises and the considerations which necessitate providing a speedy machinery for eviction of persons in unauthorised occupation of public premises apply equally to both the types of public premises. We are, therefore, unable to accept the contention of Shri Yogeshwar Prasad that the definition of public premises contained in Section 2(e) of the Public Premises Act should be so construed as to exclude premises used for commercial purposes from its ambit.

29. Shri A. K. Ganguli, has urged that a person who was put in occupation of the premises as a tenant and who has continued in such occupation after the expiry or the termination of his tenancy cannot be regarded as a person in unauthorised occupation under Section 2(g) of the Public Premises Act. The submission of Shri Ganguli is that, the occupation of a person who was put in possession as a tenant is juridical possession and such an occupation cannot be regarded as

unauthorised occupation. In support of this submission, Shri Ganguli has placed reliance on the decision of the Bombay High Court in *Brigadier K. K. Verma v. Union of India* (AIR 1954 Bom 358 : 56 Bom LR 308) which has been approved by this Court in *Lallu Yeshwant Singh v. Rao Jagdish Singh* ((1968) 2 SCR 203 : AIR 1968 SC 620).

30. The definition of the expression 'unauthorised occupation' contained in Section 2(g) of the Public Premises Act is in two parts. In the first part the said expression has been defined to mean the occupation by any person of the public premises without authority for such occupation. It implies occupation by a person who has entered into occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and it expressly covers continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. This part covers a case where a person had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words "whether by way of grant or any other mode of transfer" in this part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The definition of unauthorised occupation contained in Section 2(g) of the Public Premises Act would, therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law.

31. *Brigadier K. K. Verma v. Union of India* (AIR 1954 Bom 358 : 56 Bom LR 308) was decided under the provisions of the Government Premises (Eviction) Act, 1950, which did not contain the definition of the expression 'unauthorised occupation'. In that case it has been held that under the Indian law, the possession of a tenant who has ceased to be a tenant is protected by law and although he may not have the right to continue in possession, after the termination of the tenancy, his possession is juridical and that possession is protected by statute, and therefore, an erstwhile tenant can never become a trespasser and his possession cannot be regarded as unauthorised occupation. The learned Judges have also observed that unless the legislature had given indication of a clear intention that by the expression 'unauthorised occupation' it meant not only person who had no title at all but also persons who are titled at the inception and whose title came to an end, it would not be proper to give an interpretation to the expression 'unauthorised occupation' which would run counter to the principles of law which have been accepted in this country. After this decision the legislature intervened and introduced the definition of the expression 'unauthorised occupation' in the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, which definition has been reproduced in Section 2(e) of the Public Premises Act and in the said definition the legislature has taken care to make an express provision indicating that the expression 'unauthorised occupation' includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. In the circumstances the petitioners cannot derive any assistance from the decision of the Bombay High Court in *Brigadier K. K. Verma* case (AIR 1954 Bom 358 : 56 Bom LR 308).

32. Shri Ganguli has placed reliance on the decision of A. P. Sen, J. in *Express Newspapers Pvt. Ltd. v. Union of India* ((1986) 1 SCC 133 : 1985 Supp 3 SCR 382) and has submitted that in that case the learned Judge has held that cases involving relationship between the lessor and lessee fall outside the purview of the Public Premises Act. We have carefully perused the said decision and we are unable to agree with Shri Ganguli. In that case A. P. Sen, J. has observed that the new building

had been constructed by the Express Newspapers Pvt. Ltd. after the grant of permission by the unauthorised occupation of the same within the meaning of Section 2(g) of the Public Premises Act. It was also held by the learned Judge that the Express Newspapers Ltd. with the sanction of lessor on plots Nos. 9 and 10 demised on perpetual lease can, by no process of reasoning, be regarded as public premises belonging to the Central Government under Section 2(e) of the Public Premises Act, and therefore, there was no question of the lessor applying for eviction of the Express Newspapers Pvt. Ltd. under the provisions of the Public Premises Act. The aforesaid observations indicate that the learned Judge did not proceed on the basis that cases involving relationship of lessor and lessee fall outside the purview of the Public Premises Act. On the other hand the said observations show that the learned Judge has held that the provisions of the Public Premises Act could not be invoked in the facts of that case.

33. Another submission that has been urged by Shri Ganguli is that the question whether a lease has been determined or not involves complicated questions of law and the estate officer, who is not required to be an officer well versed in law, cannot be expected to decide such questions and, therefore, it must be held that the provisions of the Public Premises Act have no application to a case when the person sought to be evicted had obtained possession of the premises as a lessee. It is true that there is no requirement in the Public Premises Act that the estate officer must be a person well versed in law. But, that, by itself, cannot be a ground for excluding from the ambit of the said Act premises in unauthorised occupation of persons who obtained possession of the said premises under a lease. Section 4 of the Public Premises Act requiring issuing of a notice to the person in unauthorised occupation of any public premises requiring him to show cause why an order of eviction should not be made. Section 5 makes provisions for production of evidence in support of the cause shown by the person who has been served with a notice under Section 4 and giving of a personal hearing by the estate officer. Section 8 provides that an estate officer, shall, for the purpose of holding and enquiry under the said Act have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of the matters specified therein namely :

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring discovery and production of documents; and
- (c) any other matters which may be prescribed.

34. Rule 5(2) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, requires the Estate Officer to record the summary of evidence tendered before him. Moreover Section 9 confers a right of appeal against an order of the Estate Officer and the said appeal has to be heard either by the District Judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the District Judge may designate in that behalf. It shows that the final order that is passed is by a judicial officer in the rank of a District Judge.

35. A similar contention was raised before this Court in *Maganlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay* ((1974) 2 SCC 402 : (1975) 1 SCR 1) wherein the validity of the provisions of Chapter V-A of the Bombay Municipal Corporation Act, 1888 and the Bombay Government Premises (Eviction) Act, 1955 were challenged before this Court and the said contention was negated. Alagiriswami, J. speaking for the majority, has observed as under : (SCC

p. 423, para 17)

"Even though the officers deciding these questions would be administrative officers there is provision in these Acts for giving notice to the party affected, to inform him of the grounds on which the order of eviction is proposed to be made, for the party affected to file a written statement and produce documents and be represented by lawyers. The provisions of the Civil Procedure Code regarding summoning and enforcing attendance of persons and examining them on oath, and requiring the discovery and production of documents are a valuable safeguard for the person affected. So is the provision for appeal to the Principal Judge of the city civil court in the city of Bombay, or to a District Judge in the districts who has got to deal with the matter as expeditiously as possible, also a sufficient safeguard as was recognised in Suraj Mall Mohta case (Suraj Mall Mohta & Co. v. A. V. Visvanatha Sastri, (1955) 1 SCR 448 : AIR 1954 SC 545 : (1954) 26 ITR 1)".

36. Having dealt with the submission of learned counsel for the petitioners on the applicability of the provisions of Public Premises Act, we may come to the main question involved in these matters, namely, whether the provisions of the Public Premises Act override the provisions of the Rent Control Act. For appreciating the submissions of the learned counsel on this question it is necessary to examine the provisions of both the enactments. The relevant provisions of the Public Premises Act have already been set out. We may briefly refer to the provisions of the Rent Control Act.

37. The Rent Control Act has been enacted by Parliament to provide for the control of rents and evictions and of rates of hotels and lodging houses and for the lease of vacant premises to government, in certain areas in the Union territory of Delhi. It extends to the areas included within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule to the Act [Section 1 (2)]. The expression 'premises' is defined in Section 2(i) as under :

"2. (i) 'Premises' means any building or part of a building which is or, is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes -

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of the building;

(ii) any furniture supplied by the landlord for use in such building or part of the building;

but does not include a room in a hotel or lodging house."

38. Section 3, which excludes the applicability of the Act to certain premises, provide as under :

"3. Nothing in this Act shall apply :

(a) to any premises belonging to the government;

(b) to any tenancy or other like relationship created by a grant from the government in respect of the premises taken on lease, or requisitioned, by the government :

Provided that where any premises belonging to government have been or are lawfully let by any person by virtue of an agreement with the government or otherwise, then, notwithstanding any judgment, decree or order of any court or other authority, the provisions of this Act shall apply to such tenancy;

(c) to any premises, whether, residential or not, whose monthly rent exceeds three thousand and five hundred rupees; or

(d) to any premises constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1988, for a period of ten years from the date of completion of such construction."

39. Chapter II (Sections 4 to 13) contains provisions regarding rent including fixation of standard rent. Chapter III (Sections 14 to 25) contains provisions for control of eviction of tenants. Section 14 gives protection to tenants against eviction and provides that an order for eviction of a tenant can be passed only on one or more of the grounds mentioned in clauses (a) to (l) of sub-section (1). Special provisions have been made for recovery of immediate possession of premises in Sections 14-A to 14-D in respect of certain classes of landlords. Section 22 contains a special provision for recovery of possession of premises where the landlord is a company or a body corporate or a local authority or a public institution if the premises are required for the use of employees of such landlord or, in the case of a public institution, for the furtherance of its activities. In Chapter III-A (Sections 25-A to 25-C) provisions have been made for summary trial of certain applications for eviction on the ground of bona fide requirement of the landlord. Chapter IV (Sections 26 to 29) contains provisions relating to deposit of rent. Chapter V (Sections 30 to 34) contains provisions relating hotels and lodging houses. Chapter VI (Sections 35 to 43) contains provisions relating to appointment of Controllers and their powers and functions and appeals. Section 42 makes provisions for execution of orders passed by the Controller or in appeal, as a decree of civil court. Section 43 attaches finality to the order passed by the Controller and the order passed in appeal. Chapter VII (Sections 44 to 49) contains provisions regarding special obligations of landlords and penalties. Chapter VIII (Sections 50 to 57) contains miscellaneous provisions. Under Section 50 jurisdiction of civil courts is barred in respect of matters specified therein. Section 54 saves the operation of certain enactments, namely, Administration of Evacuee Property Act, 1950 the Slum Areas (Improvement and Clearance) Act, 1956 and the Delhi Tenants (Temporary Protection) Act, 1956.

40. On a comparison of the provisions of the Public Premises Act and the Rent Control Act it will be found that :

1. By virtue of Section 1(2) of the Public Premises Act, the said Act is applicable throughout the territory of India, whereas, in view of Section 1(2) of the Rent Control Act, the said Act is confined in its application to areas included within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule and any other urban area included within the limits of the Municipal Corporation of Delhi to which provisions of the said Act are extended by the Central Government by notification in the official gazette.

2. Under clause (c) of Section 2 of the Public Premises Act, the expression 'premises' has a wider connotation and it includes open land as well as building or part of a

building. Under the Rent Control Act the expression 'premises' as defined in clause (i) of Section 2 has a narrower connotation to mean any building or a part or building and it does not cover open land.

3. In view of the definition of the expression 'public premises' contained in clause (e) of Section 2 of the Public Premises Act, the said Act, in addition to the premises belonging to or taken on lease by or on behalf of Central Government, is applicable to premises belonging to or taken on lease by or on behalf of the companies and statutory bodies mentioned in clauses (2) and (3) of Section 2(e). The Rent Control Act, on the other hand, is applicable to all premises except premises belonging to the government or to any tenancy or other like relationship created by a grant from the government in respect of the premises taken on lease, or requisitioned, by the government (Section 3). In view of the amendment introduced in Section 3 the Delhi Rent Control Act is not applicable to premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees and premises constructed on or after the commencement of the said Amendment Act, for a period of ten years from the date of completion of such construction.

4. The provisions of the Public Premises Act are applicable to public premises in occupation of a person having no authority for such occupation, including a person who was allowed to occupy the public premises under a grant or any other mode of transfer and who has continued in occupation after the authority under which he was allowed to occupy that premises has expired or has been terminated. The provisions of the Delhi Rent Control Act are applicable only to persons who have obtained possession of the premises as tenants and whose tenancy is continuing as well as persons who after the expiration or termination of the tenancy have continued in occupation of the premises.

41. As a result of this comparison it can be said that certain premises, viz. building or parts of buildings lying within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and in urban areas within the limits of the Municipal Corporation of Delhi, which belong to or are taken on lease by any of the companies or statutory bodies mentioned in clauses (2) and (3) of Section 2(e) of the Public Premises Act and which are in occupation of a person who obtained possession of the said premises as a tenant and whose tenancy has expired or has been terminated but who is continuing in occupation of the same, would ex-facie fall within the purview of both the enactments. The question which, therefore, arises is whether the occupants of such premises can seek protection available under the provisions of Rent Control Act and he can be evicted from the premises only in accordance with the said provisions and proceedings for eviction of such a person cannot be initiated under the provisions of the Public Premises Act.

42. Shri Venugopal and other learned counsel representing the petitioners have urged that the Rent Control Act is a self-contained code providing for regulating the relationship of landlords and tenants and it makes comprehensive provisions with regard to control of rents as well as eviction of tenants and that the provision of the Rent Control Act, being special in nature insofar as the leasehold properties in Delhi are concerned, would prevail over the provisions of the Public Premises Act which are in the nature of general provisions relating to eviction of unauthorised occupants from government premises in the whole country. In support of this submission the learned counsel for the petitioners have placed reliance on Sections 22 and 54 and the non-obstante clause contained in Section 14(1) of the Rent Control Act. It has also been urged by the learned counsel for

the petitioners that the Public Premises Act does not contain any machinery for the termination of the tenancy and that in view of the decision of this Court in *V. Dhanapal Chettiar v. Yesodai Ammal* ((1979) 4 SCC 214 : (1980) 1 SCR 334), the jural relationship of landlord and tenant can come to an end only on the passing of an order of eviction by a competent court in accordance with the provisions of the Rent Control Act and that in the absence of an order of eviction under the provisions of the Rent Control Act no proceedings can be initiated against a person who came into occupation of the premises as a tenant and who is continuing in occupation of the said premises after the contractual tenancy has expired or has been terminated.

43. The learned Attorney General and Shri G. L. Sanghi, appearing on behalf of the respondents in the appeals, have urged that the Public Premises Act is in the nature of a special enactment making provision for speedy and expeditious recovery of possession of public premises from persons in unauthorised occupation of the same whereas the Rent Control Act is a general enactment regulating the relationship of landlord and tenant and since the Public Premises Act is a special enactment it would override the provisions of the Rent Control Act. It has also been urged that the Public Premises Act is a later enactment, having been enacted in 1971, whereas the Rent Control Act was enacted in 1958, and, therefore, the Public Premises Act would prevail over the Rent Control Act. It has been urged that Section 15 of the Public Premises Act which bars the jurisdiction of other courts is in the nature of a non-obstante clause which gives overriding effect to the provisions of the Public Premises Act.

44. The learned Additional Solicitor General, appearing for the respondents in the writ petition, has adopted a different line of argument. He has contended that the Public Premises Act has been enacted by Parliament in exercise of its legislative power under Article 246(1) read with Entries 32, 95 and 97 of List I of the Seventh Schedule to the Constitution whereas the Rent Control Act has been enacted by Parliament in exercise of its legislative power under Article 246(4) read with Entries 6, 7 and 13 of List III of the Seventh Schedule to the Constitution and since the Public Premises Act has been enacted in exercise of the legislative power under Article 246(1) of the Constitution, it would prevail over the Rent Control Act enacted in exercise of legislative power under Article 246(4) of the Constitution.

45. At this stage, it may be mentioned that in *Jain Ink Manufacturing Company v. Life Insurance Corporation of India* ((1988) 4 SCC 435 : (1981) 1 SCR 498) decided by a bench of three Judges, it has been held that the Public Premises Act overrides the provision of the Delhi Rent Control Act. In that case it has been observed that the scope and object of the Public Premises Act is quite different from that of Rent Control Act and while the Public Premises Act operates in a very limited field in that it applies only to a limited nature of premises belonging only to particular sets of individuals, a particular set of juristic persons like companies, corporations or the Central Government, whereas the Rent Control Act is of much wider application and it applies to all private premises which do not fall within the limited exceptions indicated in Section 2 of the Public Premises Act and the object of the Rent Control Act is to afford special protection to all the tenants or private landlords or landlords who are neither a corporation nor government or corporate bodies. It was, therefore, held that the Public Premises Act is a special Act as compared to the Rent Control Act and it overrides the provisions of the Rent Control Act. The learned counsel for the petitioners have assailed the correctness of the said decision and have submitted that it needs reconsideration.

46. As regards rent control legislation enacted by the State legislatures the position is well settled that such legislation falls within the ambit of Entries 6, 7 and 13 of List III of the Seventh Schedule to the Constitution (see : *Indu Bhushan Bose v. Rama Sundari Devi* ((1969) 2 SCC 289 : (1970) 1

SCR 443), V. Dhanpal Chettiar case ((1979) 4 SCC 214 : (1980) 1 SCR 334); Jai Singh Jairam Tyagi v. Mamanchand Ratilal Agarwal ((1980) 3 SCC 162 : (1980) 3 SCR 224) and Accountant and Secretarial Services Pvt. Ltd., v. Union of India ((1988) 4 SCC 324).

47. The Rent Control Act has been enacted by Parliament in relation to the Union territory of Delhi in exercise of the legislative power conferred under Article 246(4) of the Constitution which empowers Parliament to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

48. The Public Premises Act deals with government property as well as property belonging to other legal entities mentioned in clauses (2) and (3) of Section 2(e) of the Public Premises Act. Insofar as it relates to eviction of unauthorised occupants from premises belonging to or taken on lease or requisitioned by or on behalf of the Central Government the Public Premises Act would fall within Entry 32 of List I being law with respect to a property of the Union. The property belonging to the various legal entities mentioned in clauses (2) and (3) of Section 2(e) of the Public Premises Act cannot be regarded as property of the Union and the Public Premises Act cannot be held to have been enacted under Entry 32 of List I in respect of the said properties. In Accountant and Secretarial Services Pvt. Ltd. v. Union of India ((1988) 4 SCC 324) this Court has held that the Public Premises Act, in relation to properties other than the properties belonging to the Central Government has been enacted under the concurrent list. The learned Additional Solicitor General has placed reliance on the decision of this Court in Smt. Saiyada Mossarrat v. Hindustan Steel Ltd. ((1989) 1 SCC 272) wherein it has been held that with regard to the subject matter of speedy eviction of unauthorised occupants from properties belonging to a government company, wherein the Central Government has more than fifty one percent of the paid-up capital, the source of authority can be traced to Entry 97 read with Entry 95 Union List (List I). This Court has, however, affirmed the decision of the Division Bench of Madhya Pradesh High Court in L. S. Nair v. Hindustan Steel Ltd. (AIR 1980 MP 106 : (1980) 1 Ren CR 553 : 1980 MPLJ 429) wherein it has been held that insofar as the Public Premises Act deals with a lessee or licensee of premises belonging to a government company, the subject matter of the Act would be covered by Entries 6, 7 and 46 of List III. After quoting the observations of the Madhya Pradesh High Court in this regard, this Court has observed : (SCC p. 282, para 12)

"Learned counsel for the petitioner has not been able to show that there is any infirmity in the reasoning of the High Court."

This shows that the decision of this Court is founded on the view mentioned above. Since the Act was held to be covered by Entries 6, 7 and 46 of List III, it was not necessary to invoke the residuary power of legislation under Entry 97 of List I. The observations made by this Court that the source of authority in the matter of speedy eviction of unauthorised occupants from properties belonging to a government company wherein the Central Government has more than fifty one per cent of the of the paid-up share capital can, in any case, be traced to Entry 97 read with Entry 95 of List I are obiter in nature only. There is, therefore, no inconsistency between the decisions of this Court in Accountant and Secretarial Services Pvt. Ltd. ((1988) 4 SCC 324) and Smt. Saiyada Mossarrat case ((1989) 1 SCC 272) inasmuch as in both the decisions it is held that the public Premises Act insofar as it deals with a lessee or licensee of premises other than premises belonging to the Central Government has been enacted in exercise of the legislative powers in respect of matters enumerated in the Concurrent List. We are in agreement with this view.

49. This means that both the statutes, viz. the Public Premises Act and the Rent Control Act, have

been enacted by the same legislature, Parliament, in exercise of the legislative powers in respect of the matters enumerated in the Concurrent List. We are, therefore, unable to accept the contention of the learned Additional Solicitor General that the Public Premises Act, having been enacted by Parliament in exercise of legislative powers in respect of matters enumerated in the Union List would ipso facto override the provisions of the Rent Control Act enacted in exercise of the legislative powers in respect of matters enumerated in the Concurrent List. In our opinion the question as to whether the provisions of the Public Premises Act override the provision of the Rent Control Act will have to be considered in the light of the principles of statutory interpretation applicable to laws made by the same legislature.

50. One such principle of statutory interpretation which is applied is contained in the latin maxim : *leges posteriores priores contrarias abrogant* (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim : *generalia specialibus non derogant* (a general provision does not derogate from a special one.) This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Bennion, *Statutory Interpretation* pp. 433-34).

51. The rationale of this rule is thus explained by this Court in the *J. K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of Uttar Pradesh* ((1961) 3 SCR 185 : AIR 1961 SC 1170 : (1961) 1 LLJ 540) : (SCR p. 194)

"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier directions should have effect."

52. In *U. P. State Electricity Board v. Hari Shanker Jain* ((1978) 4 SCC 16 : 1978 SCC (L&S) 481 : (1979) 1 SCR 355) this Court has observed : (SCR p. 366 : SCC p. 27 para 9)

"In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament."

53. In *Life Insurance Corporation v. D. J. Bahadur* ((1981) 1 SCC 315 : 1981 SCC (L&S) 111 : (1981) 1 SCR 1083) Krishna Iyer, J. has pointed out : (SCR p. 1127 : SCC pp. 350-51, para 52)

"In determining whether a statute is a special or a general one, the focus must be on the principal subject matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law."

54. The Public Premises Act is a later enactment, having been enacted on August 23, 1971, whereas the Rent Control Act was enacted on December 31, 1958. It represents the later will of Parliament and should prevail over the Rent Control Act unless it can be said that the Public Premises Act is a

general enactment, whereas the Rent Control Act is a special enactment and being a special enactment the Rent Control Act should prevail over the Public Premises Act. The submission of learned counsel for the petitioners is that the Rent Control Act is a special enactment dealing with premises in occupation of tenants, whereas the Public Premises Act is a general enactment dealing with the occupants of public premises and that insofar as public premises in occupation of tenants are concerned the provisions of the Rent Control Act would continue to apply and to that extent the provisions of the Public Premises Act would not be applicable. In support of this submission reliance has been placed on the non-obstante clauses contained in Sections 14 and 22 of the Rent Control Act as well as the provisions contained in Sections 50 and 54 of the said Act. On the other hand the learned counsel for the respondents have urged that the Rent Control Act is a general enactment dealing with the relationship of landlord and tenant generally, whereas the Public Premises Act is a special enactment making provisions for speedy recovery of possession of public premises in unauthorised occupation and that the provisions of the Public Premises Act, a later special Act, will, therefore, override the provisions of the Rent Control Act insofar as they are applicable to public premises in occupation of persons who have continued in occupation after the lease has expired or has been determined. The learned counsel for the respondents have placed reliance on Section 15 of the Public Premises Act, a later special Act, will, therefore, override the provisions of the Rent Control Act insofar as they are applicable to public premises in occupation of persons who have continued in occupation after the lease has expired or has been determined. The learned counsel for the respondents have placed reliance on Section 15 of the Public Premises Act which bars the jurisdiction of all courts in respect of the eviction of any person who is in unauthorised occupation of any public premises and other matters specified therein. It has been submitted that the said provision is also in the nature of a non-obstante clause which gives overriding effect to the provisions of the Public Premises Act. Thus each side claims the enactment relied upon by it is a special statute and the other enactment is general and also invokes the non-obstante clause contained in the enactment relied upon.

55. The Rent Control Act makes a departure from the general law regulating the relationship of landlord and tenant contained in the Transfer of Property Act inasmuch as it makes provision for determination of standard rent, it specifies the grounds on which a landlord can seek the eviction of a tenant, it prescribes the forum for adjudication of disputes between landlords and tenants and the procedure which has to be followed in such proceedings. The Rent Control Act can, therefore, be said to be a special statute regulating the relationship of landlord and tenant in the Union territory of Delhi. The Public Premises Act makes provision for a speedy machinery to secure eviction of unauthorised occupants from public premises. As opposed to the general law which provides for filing of a regular suit for recovery of possession of property in a competent court and for trial of such a suit in accordance with the procedure laid down in the Code of Civil Procedure, the Public Premises Act confers the power to pass an order of eviction of an unauthorised occupant in a public premises on a designated officer and prescribes the procedure to be followed by the said officer before passing such an order. Therefore, the Public Premises Act is also a special statute relating to eviction of unauthorised occupants from public premises. In other words, both the enactments, namely, the Rent Control Act and the Public Premises Act, are special statutes in relation to the matters dealt with therein. Since, the Public Premises Act, is a special statute and not a general enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act must prevail over the Rent Control Act.

56. We arrive at the same conclusion by applying the principle which is followed for resolving a conflict between the provisions of two special enactments made by the same legislature. We may in

this context refer to some of the cases which have come before this Court where the provisions of two enactments made by the same legislature were found to be inconsistent and each enactment was claimed to be a special enactment and had a non-obstante clause giving overriding effect to its provisions.

57. In *Shri Ram Narain v. Simla Banking and Industrial Co. Ltd.* (1956) SCR 603 : AIR 1956 SC 614 : (1956) 26 Comp Cas 280) this Court was considering the provisions contained in the Banking Companies Act, 1949 and the Displaced Persons (Debts Adjustment) Act, 1951. Both the enactments contained provisions giving overriding effect to the provisions of the enactment over any other law. This Court has observed : (SCR pp. 613 and 615)

"Each enactment being a special Act, the ordinary principle that a special law overrides a general law does not afford any clear solution in this case."

"It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein."

58. Similarly in *Kumaon Motor Owners' Union Ltd. v. State of Uttar Pradesh* ((1966) 2 SCR 121 : AIR 1966 SC 785) there was conflict between the provisions contained in Rule 131(2)(gg) and (i) of the defence of india Rules, 1962 and chapter IV-A of the Motor Vehicles Act, 1939. Section 68-B gave overriding effect to the provisions of Chapter IV-A of the Motor Vehicles Act whereas Section 43 of the Defence of India Act, 1962, gave overriding effect to the provisions contained in the Defence of India Rules. This Court held that the Defence of India Act was later than the Motor Vehicles Act and, therefore, if there was anything repugnant, the provisions of the later Act should prevail. This Court also looked into object behind the two statutes, namely, Defence of India Act and Motor Vehicles Act and on that basis also it was held that the provisions contained in the Defence of India Rules would have an overriding effect over the provisions of the Motor Vehicles Act.

59. In *Sarwan Singh v. Kasturi Lal* ((1977) 1 SCC 750 : (1977) 2 SCR 421), the question for consideration was, whether the provisions of Section 14-A and Chapter III-A of the Rent Control Act will prevail over those contained in Sections 19 and 39 of the Slum Areas (Improvement and Clearance) Act, 1956. Sections 14-A 25-A of the Rent Control Act contained non-obstante clauses but in Section 54 of the Rent Control Act it was expressly provided that nothing in the said Act shall affect the provisions of the Slum Areas (Improvement and Clearance) Act, 1956. Moreover in Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 there was non-obstante clause and Section 39 of the said Act gave overriding effect to the provisions of the said enactment over any other law. This Court has observed : (SCR p. 433 : SCC p. 760, para 20)

"When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration."

60. After examining the special and specific purpose underlying the enactment of Section 14-A and Chapter III-A of the Rent Control Act and the fact that the Rent Control Act was a later enactment

this Court held that the provisions of the Rent Control Act would prevail over those contained in the Slum Areas (Improvement and Clearance) Act, 1956.

61. The principle which emerges from these decisions is that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein. We propose to consider this matter in the light of this principle.

62. The Statement of Objects and Reasons for the enactments of the Rent Control Act, indicates that it has been enacted with a view :

(a) to devise a suitable machinery for expeditious adjudication of proceedings between landlords and tenants;

(b) to provide for the determination of the standard rent payable by tenants of the various categories of premises which should be fair to the tenants, and the same time, provide incentive for keeping the existing houses in good repairs, and for further investments in house construction; and

(c) to give tenants a larger measure of protection against eviction.

This indicates that the object underlying the Rent Control Act is to make provision for expeditious adjudication of disputes between landlords and tenants, determination of standard rent payable by tenants and giving protection against eviction to tenants. The premises belonging to the government are excluded from the ambit of the Rent Control Act which means that the Act has been enacted primarily to regulate the private relationship between landlords and tenants with a view to confer certain benefits on the tenants and at the same time to balance the interest of the landlords by providing for expeditious adjudication of proceedings between landlords and tenant.

63. As mentioned earlier, the Public Premises Act has been enacted with a view to provide for eviction of unauthorised occupants from public premises. In the Statement of Objects and Reasons for this enactment reference has been made to the judicial decisions whereby the 1958 Act was declared as unconstitutional and it has been mentioned :

"The court decisions, referred to above, have created serious difficulties for the government inasmuch as the proceedings taken by the various Estate Officers appointed under the Act either for the eviction of persons who are in unauthorised occupation of public premises or for the recovery of rent or damages from such persons stand null and void It has become impossible for government to take expeditious action even in flagrant cases of unauthorised occupation of public premises and recovery of rent or damages for such unauthorised occupation. It is, therefore, considered imperative to restore a speedy machinery for the eviction of persons who are in unauthorised occupation of public premises keeping in view at the same time the necessity of complying with the provisions of the Constitution and the judicial pronouncements, referred to above."

This shows that the Public Premises Act has been enacted to deal with the mischief of rampant unauthorised occupation of public premises by providing a speedy machinery for the eviction of persons in unauthorised occupation. In order to secure this object the said Act prescribes the time

period for the various steps which are required to be taken for securing eviction of the persons in unauthorised occupation. The object underlying the enactment is to safeguard public interest by making available for public use premises belonging to Central Government, companies in which the Central Government has substantial interest, corporations owned or controlled by the Central Government and certain autonomous bodies and to prevent misuse of such premises.

64. It would thus appear that, while the Rent Control Act is intended to deal with the general relationship of landlords and tenants in respect of premises other than government premises, the Public Premises Act is intended to deal with speedy recovery of possession of premises of public nature, i.e. property belonging to the Central Government, or companies in which the Central Government has substantial and certain corporations, institutions, autonomous bodies and local authorities. The effect of giving overriding effect to the provisions of the Public Premises Act over the Rent Control Act, would be that buildings belonging to companies, corporations and autonomous bodies referred to in Section 2(e) of the Public Premises Act would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. The reason underlying the exclusion of property belonging to the Government from the ambit of the Rent Control Act, is that the Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest. What can be said with regard to government in relation to property belonging to it can also be said with regard to companies, corporations and other statutory bodies mentioned in Section 2(e) of the Public Premises Act. In my opinion, therefore, keeping in view the object and purpose underlying both the enactments viz. the Rent Control Act and the Public Premises Act, the provisions of the Public Premises Act have to be construed as overriding the provisions contained in the Rent Control Act.

65. As regards the non-obstante clauses contained in Sections 14 and 22 and the provisions contained in Sections 50 and 54 of the Rent Control Act, it may be stated that Parliament was aware of these provisions when it enacted the Public Premises Act containing a specific provision in Section 15 barring jurisdiction of all courts (which would include the Rent Controller under the Rent Control Act). This indicates that Parliament intended that the provisions of the Public Premises Act would prevail over the provisions of the Rent Control Act in spite of the abovementioned provisions contained in the Rent Control Act.

66. It has been urged by the learned counsel for the petitioner that there is no conflict between the provisions of the Rent Control Act and the Public Premises Act and that both the provisions can be given effect to without one overriding the other. In this regard, it has been pointed out that since no provision has been made in the Public Premises Act for the termination of the lease, the provisions of the Rent Control Act can be held applicable up to the stage of termination of the lease, and thereafter, proceedings can be initiated for eviction under the provisions of the Public Premises Act. In support of this submission, reliance has been placed on Dhanpal Chettiar case ((1979) 4 SCC 214 : (1980) 1 SCR 334), wherein it has been held that in view of the special provisions contained in the State Rent Control Acts, it is no longer necessary to issue a notice under Sections 106 of the Transfer of Property Act to terminate the tenancy because in spite of the said notice the tenant is entitled to continue in occupation by virtue of the provisions of the said Acts. In the said case, it has been further laid down that the relationship between the landlord and tenant continues till the passing of the order of eviction in accordance with the provisions of the Rent Act, and therefore, for the eviction of the tenant continues till the passing of the order of eviction in accordance with the law, an order of the competent court under the Rent Control Act is necessary. This would mean that in order to evict a person who is continuing in occupation after the expiration or termination of his

contractual tenancy in accordance with law, two proceedings will have to be initiated. First, there will be proceedings under Rent Control Act before the Rent Controller followed by appeal before the Rent Control Tribunal and revision before the High Court. After these proceedings have ended they would be followed by proceedings under the Public Premises Act, before the Estate Officer and the Appellate Authority. In other words, persons in occupation of public premises would receive greater protection than tenants in premises owned by private persons. It could not be the intention of Parliament to confer this dual benefit on persons in occupation of public premises.

67. It has also been urged that in Section 22 of the Rent Control Act, special provision has been made for recovery of possession of premises belonging to a company or other body corporate or any local authority or any public institution and that premises belonging to companies, corporations and autonomous bodies mentioned in clauses (2) and (3) of Section 2(e) of the Public Premises Act would be covered by the said provision and that in view of this special provision it is not necessary to have a further provision in the Public Premises Act for the recovery of possession belonging to those bodies, and therefore, the provisions of the Public Premises Act should be confined in their application to premises other than premises covered by the Rent Control Act. Section 22 of the Rent Control Act provides as under :

"22. Where the landlord in respect of any premises is any company or other body corporate or any local authority or any public institution and the premises are required for the use of employees of such landlord or in the case of a public institution for the furtherance of its activities, then, notwithstanding anything contained in Section 14 or any other law, the Controller may, on an application made to him in his behalf by such landlord, place the landlord in vacant possession of such premises by evicting the tenant and every other person who may be in occupation thereof, if the Controller is satisfied -

(a) that the tenant to whom such premises were let for use as a residence at a time when he was in the service or employment of the landlord, has ceased to be in such service or employment; or

(b) that the tenant has acted in contravention of the terms, express or implied, under which he was authorised to occupy such premises; or

(c) that any other person is in unauthorised occupation of such premises; or

(d) that the premises are required bona fide by the public institution for the furtherance of its activities.

Explanation - For the purpose of this section, "public institution" includes any educational institutional, library, hospital and charitable dispensary but does not include any such institution set up by any private trust."

68. The said special provisions shows that, it enables recovery of possession of premises of which the landlord is a company or other body corporate or any local authority or any public institution in certain circumstances viz. if the premises are required for the use of the employees of such landlord. In the case of public institutions possession can also be obtained under this provision if the premises are required for the furtherance of its activities. In other words, recovery of possession is permissible under this provision only in certain circumstances and for certain purposes. In spite of

this provision Parliament has considered it necessary to extend the Public Premises Act to premises belonging to companies, corporations and statutory bodies mentioned in clauses (2) and (3) of Section 2(e) of the Public Premises Act. The scope and ambit of the aforesaid power conferred under the Public Premises Act cannot be restricted by reference to the provision contained in Section 22 of the Rent Control Act.

69. It has been urged by the learned counsel for the petitioners that many of the corporations referred to in Section 2(e) (2)(ii) of the Public Premises Act, like the nationalised banks and the Life Insurance Corporation, are trading corporations and under the provisions of the enactments whereby they are constituted these corporations are required to carry on their business with a view to earn profit, and that there is nothing to preclude these corporations to buy property in possession of tenants at a low price and after buying such property evict the tenants after terminating the tenancy and thereafter sell the said property at a much higher value because the value of property in possession of tenants is much less as compared to vacant property. We are unable to cut down the scope of the provisions of the Public Premises Act on the basis of such an apprehension because as pointed out by this Court in *Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay* ((1989) 3 SCC 293) : (SCC p. 306, para 27)

"..... every activity of a public authority especially in the background of the assumption on which such authority enjoys immunity from the rigours of the Rent Act, must be informed by reason and guided by the public interest. All exercise of discretion or power by public authorities as the respondent, in respect of dealing with tenants in respect of which they have been treated separately and distinctly from other landlords on the assumption that they would not act as private landlord, must be judged by that standard."

These observations were made in the context of the provisions of the Bombay Rents, Hotel and Lodging Houses Rates (Control) Act, 1947 whereby exemption from the provisions of the Act has been granted to premises belonging to the Bombay Port Trust. The consequence of giving overriding effect to the provisions of the Public Premises Act is that premises belonging to companies and statutory bodies referred to in clauses (2) and (3) of Section 2(e) of the Public Premises Act would be exempted from the provisions of the Rent Control Act. The actions of the companies and statutory bodies mentioned in clauses (2) and (3) of Section 2(e) of the Public Premises Act while dealing with their properties under the Public Premises Act will, therefore, have to be judged by the same standard.

70. For the reasons aforesaid, we are unable to accept the contention of the learned counsel for the petitioners that the provisions contained in the Public Premises Act cannot be applied to premises which fall within the ambit of the Rent Control Act. In our opinion, the provisions of Public Premises Act, to the extent they cover premises falling within the ambit of the Rent Control Act, override the provisions of the premises under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act.

71. In Civil Appeal No. 3723 of 1966, Shri Yogeshwar Prasad sought to raise contentions relating to the particular facts of that case, namely, that the termination of the lease of the appellant is vitiated by mala fides and that the said appellant could not be held to be a person in unauthorised occupation of the premises and further that the proceedings have not been taken in accordance with the provisions of the Public Premises Act. We find that in this case the appellant filed a writ petition in the High Court directly against the said order passed by the Estate Officer without filing an appeal

against the said order before the Appellate Authority. The High Court has held that the question of mala fides is a disputed question of fact and the same could not be gone into in proceedings under Article 226 of the Constitution. We are in agreement of the said view of the High Court. As regards the other contentions we are of the view that the appellant cannot be permitted to agitate matters which could be agitated by him in appeal before the Appellate Authority.

72. In Civil Appeals Nos. 2368 and 2369 of 1986 the learned counsel for the respondents have raised a preliminary objection with regard to the maintainability of these appeals on the ground that the appellants, on account of their conduct, are not entitled to invoke the jurisdiction of this court under Article 136 of the Constitution. The submission of the learned counsel is that before initiating proceedings under the provisions of the Public Premises Act the respondent Bank, viz. the Punjab National Bank, had initiated proceedings under the Rent Control Act for the eviction of the appellants and in those proceedings the appellants had filed an objection with regard to the maintainability of the eviction proceedings under the Rent Control Act before the Additional Rent Controller and thereupon the respondent Bank initiated proceedings for eviction of the appellants under the Public Premises Act and thereafter the proceedings initiated by the respondent Bank under the Rent Control Act were dismissed by the Additional Rent Controller by orders dated August 6, 1989. The learned counsel of the respondents have urged that the appellants, having raised the objection against the Act on the ground that proceedings for eviction under the Rent Control Act on the ground that proceedings could only be maintained under the provisions of the Public Premises Act and having got them dismissed, cannot turn round and raise an objection that the proceedings for eviction under the Public Premises Act are not maintainable and the proceedings can only be taken under the Rent Control Act. The learned counsel for the appellants have submitted that special leave to appeal was granted by this Court after notice to the respondents and at that stage the respondents had raised this objection but this Court granted special leave and it is not permissible for the respondents to agitate this question now. The orders dated August 6, 1989 which were passed by the Additional Rent Controller in the proceedings for eviction initiated by the respondent Bank under the Rent Control Act against the appellants in these appeals have been placed on record by the respondents and from the said orders it appears that in the proceedings initiated under the Rent Control Act the appellants had raised a plea that the premises in question had been declared public premises under the Public Premises Act and in view of that the proceedings under the Rent Control Act were not competent. The said order also shows that the Additional Rent Controller dismissed the proceedings for eviction under the Rent Control Act on the view that the Public Premises Act is applicable to premises in question and his jurisdiction was excluded. This would show that the proceedings which were initiated by the respondent Bank for the eviction of the appellants under the Rent Control Act were dismissed as not maintainable on the ground that the Rent Control Act was not applicable to the premises and the premises are governed by the provisions of the Public Premises Act. This finding was recorded by the Additional Rent Controller in view of the objection raised by the appellants with regard to the maintainability of those proceedings. In other words, the appellants succeeded in those proceedings on the basis of their plea that the premises were not governed by the Rent Control Act and were governed by the provisions of the Public Premises Act. Having got the proceedings under the Rent Control Act dismissed the appellants are now raising the plea that the proceedings under the Public Premises Act are not maintainable and that the only remedy available is under the Rent Control Act. The conduct of the appellants would have disentitled them from invoking the jurisdiction of this Court under Article 136 of the Constitution. Since we are of the view that the appellants cannot succeed on the merits, we do not propose to dismiss the appeals on this preliminary ground.

73. In the result the appeals and the writ petition are dismissed. There will be no order as to costs.

74. The appellants in Civil Appeals Nos. 2368 and 2369 of 1986 had been dispossessed from the premises in their occupation after the dismissal of their appeals by the Additional District Judge. During the pendency of these appeals interim orders were passed by this Court whereunder possession of a part of the premises was resorted to the appellants. Since these appeals have been dismissed the appellants in both the appeals are directed to hand over the possession of the portion of the premises in their occupation to the respondent Bank within one month.

75. In Civil Appeal No. 3725 of 1986 and Writ Petition No. 864 of 1985, this Court had passed interim orders staying the eviction of the petitioners in those matters. Since the appeal and the writ petition are being dismissed the said interim orders shall stand vacated.

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